IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 420 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : YES

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ORIENTAL INSURANCE CO. LTD.

Versus

CHETNABEN MAHENDRABHAI THACKERWD/O LATE MAHENDRA VISHANJI

Appearance:

1. First Appeal No. 420 of 2001

MR SHALIN N MEHTA for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1-6

MR MEHUL S SHAH for Respondent No. 1-6

MS LILU K BHAYA for Respondent No. 10

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE H.H.MEHTA

Date of decision: 17/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

This is an appeal under Section 173 of the Motor Vehicles Act, at the instance of the Insurance Company (original opponent No.3), challenging the judgement and award passed by the Motor Accident Claims Tribunal (Main), Kutch, Bhuj, passed under Section 163A of the said Act. We have heard learned Counsel for the respective parties. Appeal admitted. Mr. M.S. Shah, learned Counsel appears for respondents Nos. 1 to 6 original claimants and waives service of notice in the appeal.

2. On the joint request of learned Counsel for the respective parties, this appeal is taken up for hearing today.

3. As aforesaid, the judgement and award which is impugned in the present appeal is one under Section 163A of the said Act. There is no controversy and it is common ground on both sides that the main claim petition under Section 166 of the said Act is still pending before the Tribunal.

4. On these facts, there is no controversy, in view of the clear decision of the Supreme Court in the case of The Oriental Insurance Co.Ltd. Vs. Hansrajbhai V. Kodala and ors. reported in Judgement Today 2001 (4) SC p.477 that since the main claim petition under Section 166 of the Act is pending, the Tribunal had no jurisdiction either to entertain or to decide the claim under Section 163A of the said Act. In the premises aforesaid, the impugned award under Section 163A of the Act is required to be quashed and set aside. We hold and direct accordingly.

5. The amount deposited with the registry by the appellant shall be transmitted to the Tribunal forthwith, that is to say - not later than 24th September, 2001. It is clarified that the respondents - original claimants are at liberty to pursue the main claim petition filed under Section 166 of the said Act and to obtain the judgement and order thereon on merits and in accordance with law.

6. It is further clarified that the respondents original claimants would also have a right to prefer an application under Section 140 of the Act in the main claim petition filed under Section 166 of the said Act.

7. This appeal is therefore allowed with no order as to costs. Decree accordingly.

8. On the facts and circumstances of the case, it is desirable that the Tribunal should proceed with the hearing of the main claim petition under Section 166 of the Act as expeditiously as possible and to dispose of the same in consonance with the date of its filing and the workload before the Tribunal.

(Y.B.Bhatt,J.) (H.H.Mehta, J.)

*/Mohandas